IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2008

CORAM

THE HON'BLE MR.JUSTICE T.SUDANTHIRAM

CRL.R.C.No.718 of 2004

Sampangi .. Petitioner

vs

State rep.by
The Inspector of Police
Pernampet Police Station
Vellore District .. Respondent

Revision filed under Section 397 r/w 401 of Code of Criminal Procedure to call for the records in connection with Criminal Appeal No.66 of 2000 on the file of the Additional District and Sessions Judge, Vellore, Vellore District (Fast Track Court) against S.C.No.8 of 1999 on the file of the learned Assistant Sessions Judge, Gudiyatham, Vellore District and set aside the judgment passed by the learned Additional District and Sessions Judge, Vellore, Vellore District (Fast Track Court) in C.A.No.66 of 2000 dated 11.02.2004 confirming the conviction and sentence imposed by the learned Assistant Sessions Judge, Gudiyatham, Vellore District in S.C.No.8 of 1999 dated 31.08.2000.

For Petitioner : Mr.Chandrasekar for
Mr.K.S.Rajagopalan

For Respondent : Mr.J.C.Durairaj
Government Advocate
(Criminal side)

ORDER

The revision petitioner was convicted by the learned Assistant Sessions Judge, Gudiyatham, Vellore District in S.C.No.8 of 1999 for an offence under Section 376 of IPC and sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo 3 months rigorous imprisonment and the said conviction and sentence was confirmed by the learned Additional District and Sessions Judge (Fast Track Court), Vellore, Vellore District. Aggrieved by the said conviction and sentence, the revision petitioner has preferred this revision.

2. The case of the prosecution is that PW1 Muthulakshmi was the victim in this case. When she was alone in her house, the accused who was residing in the opposite house asked her to fetch water. When she took water to him, the accused pulled her inside and bolted the door. The accused gagged her mouth with one hand and undressed her by another hand. Immediately, the petitioner/accused squeezed her breast and forcibly committed rape on her.

3. The parents of PW1, who were in Melmaruvathur, went to Vaniyambadi to continue their work and utilising her loneliness, again the petitioner/ accused ravished her and ultimately, she conceived. Though the accused promised to marry her, the marriage arrangment of the accused with some one else was going in his family. Knowing this PW1 was restless and as she vomitted, the entire episode came to the knowledge of her parents. The father of PW1 who is PW3 Jayaseelan arranged for a panchayat but the accused parents need not accept the said panchayat. Therefore, PW1 gave complaint to the Sub Inspector of Police, Pernampet on 20.11.1996. Ex.P1 is the complaint. Ex.P-11 is the first information report. The matter was investigated and final report was filed. Both the Courts considered the evidence against the accused and convicted him.

4. Learned counsel for the petitioner /accused submitted that subsequent to the conviction, the petitioner had married PW1- Muthulakshmi on 22.03.2004 and they also lived together and after the marriage, she had also given birth to a child by name Sandhiya on 26.02.2005. Even, earlier to marriage but after the occurrence, PW1 had given birth to a child by name S.Samundeeswari on 27.05.1997. Now, the petitioner/accused, PW1 and their two children are living together and leading a happy married life. Learned counsel further submitted that pending this revision, a bail petition was also filed by the petitioner and he was ordered to be released on bail after considering the fact that the petitioner married the victim girl, viz., PW1. The extract of the marriage register and the affidavit of PW1 were also filed. PW1 herself appeared in Court on the date of granting bail and even today, she is present before this Court.

5. This Court perused the extract of the marriage register for the marriage of the petitioner/accused and PW1 and also the affidavit filed by PW1 and also by PW3, the father of PW1. It appears that now the petitioner/accused and PW1 are living as husband and wife. Learned counsel for the petitioner/accused submitted that the petitioner had already been in jail for 261 days and also placed reliance on the decisions reported in 1992 (3) Crimes page 82 (Dashrath vs. State of Madhya Pradesh) and 2008 (1) SCC (Cri) 161 (Hasi Mohan Barman and another vs. State of Assam and another) for reducing the sentence on the accused for the period already undergone.

6. Learned Government Advocate (Crl.side) was heard on the submissions made by the learned counsel for the petitioner. He would submit that the offence under Section 376 of IPC is not a compoundable offence but, he has no objection in reducing the sentence for the period already undergone.

7. It is observed in 1992 (3) Crimes page 82 (Dashrath vs. State of Madhya Pradesh) as follows:

"2. Learned counsel appearing for the appellant-accused only makes submission on the question of sentence. It is pointed out that the appellant-accused has already suffered six months sentence. My attention is invited to the observations made by the trial Court in paras 21 and 23 of the judgment. In the above paragraphs of the judgment of the trial Court, it has been mentioned that the prosecutrix has now started living with the appellant as his wife and has been so recognised by the parents of the prosecutrix. The appellant has to suffer conviction only because on the date of the incident 2.1.1985, the prosecutrix was alleged to be less than 18 years of age.

3. In view of the above admitted facts, in my opinion, there are adequate reasons to reduce the sentence of imprisonment to one already undergone. It would be in the interest of both of the prosecutrix and the appellant that conviction of the appellant-accused is maintained but the sentence is reduced to one already undergone.

4. Consequently, the appeal succeeds only on the question of sentence. The conviction of the appellant-accused is maintained, but the sentence of imprisonment is reduced to the one already

undergone. The bail bond of the appellant-accused stands discharged."

8. It is observed in 2008 (1) SCC (Cri) 161 (Hasi Mohan Barman and another vs. State of Assam and another) as follows:
"8. Section 320 of the Code of Criminal Procedure says that the offences punishable under the sections of the Penal Code (45 of 1860) specified in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table. A perusal of Section 320 will show that the offence under Section 313 of IPC is not compoundable. Therefore, the consent given by the wife, PW1 or the affidavit filed by her cannot be utilised for the purpose of recording a finding of acquittal in favour of the appellants-accused.

9. There are some decisions of this Court wherein the factor of compromise between the accused and the complainant (or injured or person aggrieved) has been taken into consideration for reducing the sentence.

10. The first decision on this point was rendered by this Court in Ram Pujan vs. State of U.P wherein the trial Court had convicted the accused under Section 326 IPC which is a non-compoundable offence and had sentenced the accused to four years RI. The High Court took into consideration the compromise between the appellant-accused and the injured and reduced the sentence to two years RI. This Court, after observing that the fact of compromise can be taken into account for determining the quantum of sentence, reduced the sentence to the period already undergone which was little more than four months and further imposed a fine of Rs.1500 on each of the appellants. Surendra Nath Mohanty v. State of Orissa is a decision of a Bench of three learned Judges. It was observed that in view of the legislative mandate contained in Section 320 Cr.P.C an offence can be compounded only in accordance with the provisions of the said section. The Court followed the view taken in Ram Pujan and having regard to the fact that the parties had compromised and a period of ten years had elapsed from the date of the incident reduced the sentence of five years' RI imposed under Sections 307 and 326 IPC to the period of sentence already undergone which was three months and also imposed fine of Rs.5000.

11. There are several other decisions of this Court wherein factor of compromise has been taken into consideration and the sentence has been reduced mostly to the period already undergone and they are Bankat v. State of Maharashtra, Badrilal v. State of M.P and Jetha Ram v.State of Rajasthan.

12. Following the view taken in the abovenoted cases we are of the opinion that the complainant and the principal accused having already married it will be in the interest of justice if the sentence is reduced to the period already undergone. The appeal is accordingly partly allowed. The conviction of the appellants under Section 313 IPC is maintained but the sentence is reduced to the period already undergone which appears to be about ten months. The fine imposed upon the appellants is also set aside. "
9. In view of the above decisions, this Court feels that in this case also, the sentence imposed on the petitioner/accused can be modified to the period already undergone considering the welfare of PW1 and her two children.

T.SUDANTHIRAM,J.,
vj2

10. Accordingly, this Criminal revision is partly allowed confirming the conviction and modifying the sentence imposed on the petitioner for the period already undergone. The bail bond and the sureties of the petitioner/accused stands discharged.

27.03.2008

vj2
Index : Yes
Internet : Yes

To
1. The Additional District and Sessions Judge
(Fast Track Court), Vellore, Vellore District

2. The Assistant Sessions Judge
Gudiyatham, Vellore District

3. The Public Prosecutor, Madras

CRL.R.C.No.718 of 2004